

Securities and Exchange Commission

§ 270.2a51-2

own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.

(2) *Joint Investments.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held jointly with such person's spouse, or Investments in which such person shares with such person's spouse a community property or similar shared ownership interest. In determining whether spouses who are making a joint investment in a Section 3(c)(7) Company are qualified purchasers, there may be included in the amount of each spouse's Investments any Investments owned by the other spouse (whether or not such Investments are held jointly). In each case, there shall be deducted from the amount of any such Investments the amounts specified in paragraph (e) of this section incurred by each spouse.

(3) *Investments by Subsidiaries.* For purposes of determining the amount of Investments owned by a company under section 2(a)(51)(A)(iv) of the Act [15 U.S.C. 80a-2(a)(51)(A)(iv)], there may be included Investments owned by majority-owned subsidiaries of the company and Investments owned by a company ("Parent Company") of which the company is a majority-owned subsidiary, or by a majority-owned subsidiary of the company and other majority-owned subsidiaries of the Parent Company.

(4) *Certain Retirement Plans and Trusts.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held in an individual retirement account or similar account the Investments of which are directed by and held for the benefit of such person.

(h) *Reasonable Belief.* The term "qualified purchaser" as used in section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)] means any person that meets the definition of qualified purchaser in section 2(a)(51)(A) of the Act [15 U.S.C. 80a-2(a)(51)(A)] and the rules there-

under, or that a Relying Person reasonably believes meets such definition.

[62 FR 17526, Apr. 9, 1997]

§ 270.2a51-2 Definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests.

(a) *Beneficial ownership: General.* Except as set forth in this section, for purposes of sections 2(a)(51)(C) and 3(c)(7)(B)(ii) of the Act [15 U.S.C. 80a-2(a)(51)(C) and -3(c)(7)(B)(ii)], the beneficial owners of securities of an excepted investment company (as defined in section 2(a)(51)(C) of the Act [15 U.S.C. 80a-2(a)(51)(C)]) shall be determined in accordance with section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(b) *Beneficial ownership: Grandfather provision.* For purposes of section 3(c)(7)(B)(ii) of the Act [15 U.S.C. 80a-3(c)(7)(B)(ii)], securities of an issuer beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act [15 U.S.C. 80a-3(c)(1)(A)]) ("owning company") shall be deemed to be beneficially owned by one person unless:

(1) The owning company is an investment company or an excepted investment company;

(2) The owning company, directly or indirectly, controls, is controlled by, or is under common control with, the issuer; and

(3) On October 11, 1996, under section 3(c)(1)(A) of the Act as then in effect, the voting securities of the issuer were deemed to be beneficially owned by the holders of the owning company's outstanding securities (other than short-term paper), in which case, such holders shall be deemed to be beneficial owners of the issuer's outstanding voting securities.

(c) *Beneficial ownership: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a-2(a)(51)(C)], securities of an excepted investment company beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act [15 U.S.C. 80a-3(c)(1)(A)]) ("owning company") shall be deemed to be beneficially owned by one person unless:

(1) The owning company is an excepted investment company;

§ 270.2a51-3

17 CFR Ch. II (4-1-01 Edition)

(2) The owning company directly or indirectly controls, is controlled by, or is under common control with, the excepted investment company or the company with respect to which the excepted investment company is, or will be, a qualified purchaser; and

(3) On April 30, 1996, under section 3(c)(1)(A) of the Act as then in effect, the voting securities of the excepted investment company were deemed to be beneficially owned by the holders of the owning company's outstanding securities (other than short-term paper), in which case the holders of such excepted company's securities shall be deemed to be beneficial owners of the excepted investment company's outstanding voting securities.

(d) *Indirect ownership: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a-2(a)(51)(C)], an excepted investment company shall not be deemed to indirectly own the securities of an excepted investment company seeking a consent to be treated as a qualified purchaser ("qualified purchaser company") unless such excepted investment company, directly or indirectly, controls, is controlled by, or is under common control with, the qualified purchaser company or a company with respect to which the qualified purchaser company is or will be a qualified purchaser.

(e) *Required consent: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a-2(a)(51)(C)], the consent of the beneficial owners of an excepted investment company ("owning company") that beneficially owns securities of an excepted investment company that is seeking the consents required by section 2(a)(51)(C) ("consent company") shall not be required unless the owning company directly or indirectly controls, is controlled by, or is under common control with, the consent company or the company with respect to which the consent company is, or will be, a qualified purchaser.

NOTES TO § 270.2a51-2: 1. On both April 30, 1996 and October 11, 1996, section 3(c)(1)(A) of the Act as then in effect provided that: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the

holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

2. Issuers seeking the consent required by section 2(a)(51)(C) of the Act should note that section 2(a)(51)(C) requires an issuer to obtain the consent of the beneficial owners of its securities and the beneficial owners of securities of any "excepted investment company" that directly or indirectly owns the securities of the issuer. Except as set forth in paragraphs (d) (with respect to indirect owners) and (e) (with respect to direct owners) of this section, nothing in this section is designed to limit this consent requirement.

[62 FR 17528, Apr. 9, 1997]

§ 270.2a51-3 Certain companies as qualified purchasers.

(a) For purposes of section 2(a)(51)(A) (ii) and (iv) of the Act [15 U.S.C. 80a-2(a)(51)(A) (ii) and (iv)], a company shall not be deemed to be a qualified purchaser if it was formed for the specific purpose of acquiring the securities offered by a company excluded from the definition of investment company by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)] unless each beneficial owner of the company's securities is a qualified purchaser.

(b) For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a-2(a)(51)], a company may be deemed to be a qualified purchaser if each beneficial owner of the company's securities is a qualified purchaser.

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§ 270.3a-1 Certain prima facie investment companies.

Notwithstanding section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company under the Act; *Provided, That:*

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer's total assets (exclusive of Government securities and cash items) consists of, and no